



CITY PLANNING COMMISSION

December 3, 2003/Calendar No. 9

C 030324 ZSM

IN THE MATTER OF an application submitted by the New Museum of Contemporary Art pursuant to Sections 197-c and 201 of the New York City Charter for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-14D(2)(b) to allow retail use (Use Group 6 uses) on the ground floor, cellar and subcellar of an existing 12-story building on property located at 583-587 Broadway a.k.a. 154-158 Mercer Street (Block 512, Lots 1001 and 1002) in an M1-5B District, within the SoHo-Cast Iron Historic District, Borough of Manhattan, Community District 2..

The application for the special permit was filed by the New Museum of Contemporary Art on June 12, 2002, to allow retail uses (Use Group 6 uses) on the ground floor, cellar and subcellar of an existing 12-story building on property located at 583-587 Broadway. This property is located within an M1-5B District, situated on the west side of Broadway between Houston and Prince streets and extending through the block to the east side of Mercer Street (a/k/a 154-158 Mercer Street). The building is also within the SoHo-Cast Iron Historic District.

RELATED ACTIONS

In addition to the special permit, which is the subject of this report, implementation of the proposed development also requires action by the Chair of the City Planning Commission on the following applications which are being considered concurrently with this application:

N 040027 ZAM Authorization pursuant to Section 42-142 of the Zoning Resolution to modify the use regulations of Section 42-14D(1)(b) to allow joint living work quarters for artists in a building located on Broadway with lot coverage greater than 3,600 square feet.

N 040028 ZCM Certification by the Chair of the City Planning Commission, pursuant to Section 42-141(d), to modify the requirements of Section 42-14D(1)(e) which stipulate that at least 30 percent of the gross roof area of a building containing 15 or more joint living-work quarters for artists shall be developed for recreational use.

M 970228(A) ZSM Modification of a previously approved plan for the third floor, to indicate a change from recreation space to tenant storage

BACKGROUND

583-587 Broadway is a 12-story structure completed in 1897 and designed by Cleverdon and Putzel as a store and loft building. The building has lot coverage of approximately 10,300 square feet. It is located within an M1-5B District, situated on the west side of Broadway between Houston and Prince streets and extending through the block to the east side of Mercer Street. The building is also within the SoHo-Cast Iron Historic District. The New Museum for Contemporary Art occupies the entire second floor and the majority of the ground floor and below-grade levels of the building; retail uses occupy the remainder of the ground floor and below-grade levels; and 21 units of joint living-work quarters for artists (JLWQAs) occupy the building's upper floors.

Previous Actions

On February 14, 1996, the City Planning Commission approved an application (C 960058 ZSM) filed by the Landmarks Preservation Commission on behalf of 583-587 Broadway Condominium for a special permit, pursuant to Section 74-711 of the Zoning Resolution, to modify the use regulations in an M1-5B District to allow 14 units of JLWQAs on all or portions of the third through twelfth floors; approximately 6,140 square feet of Use Group 6 (retail) uses below the second floor; and approximately 30,000 square feet of Use Group 3 (museum space) uses on the first and second floors, and cellar and sub-cellar levels. The special permit also modified certain rear yard requirements to allow development of a penthouse on the roof of the building. In conjunction with the special permit, a restrictive declaration, binding upon the current and future owners of the property, was signed and recorded, thereby, establishing a maintenance program for the building and ensuring its preservation in first-class condition.

On May 28, 1997, the City Planning Commission approved a second application (C 970228 ZSM) filed by the LPC on behalf of 583-587 Broadway Condominium for a special permit, pursuant to Section 74-711 of the Zoning Resolution, to modify the use regulations of Section 42-14D(1)(b) to allow an additional seven units of JLWQAs on portions of the third through ninth floors. In conjunction with the special permit approval, the Chair of the City Planning Commission certified to the Department of Buildings (N 970229 ZCM), pursuant to Section 42-141(d), that the roof of the building could not meet the rooftop recreation space requirements of Section 42-14D(1)(e). The provisions of the Zoning Resolution require 30 percent of the gross roof area of a building containing 15 units of JLWQAs to be developed for recreation use, as

well as an additional 100 square feet for each additional unit of JLWQA above 15. The 21 units of JLWQAs necessitated the provision of 3,532 square feet of rooftop recreation area. The roof has a total square footage of approximately 9,830 square feet, of which only 2,000 square feet is available for use as recreation space. The remaining rooftop area is occupied by mechanical equipment, the penthouse unit and the unit's private terrace area. Pursuant to the certification, the applicant was granted a waiver of the additional rooftop recreation area otherwise required.

In addition to the rooftop open space, the 583-587 Broadway Condominium agreed to provide approximately 3,180 square feet of indoor recreation space on the third floor. This space was not intended as a substitute for the outdoor recreation space which was not able to be located on the rooftop.

Current Applications

The New Museum for Contemporary Art will be moving to a new building to be constructed on the east side of the Bowery, in the vicinity of Prince Street. The museum intends to finance the new building with the sale of its existing space. The museum is seeking to convert its second floor space to two units of JLWQAs and to convert its ground floor and below grade levels to retail use. The current request would increase to 23 the total number of JLWQAs in the building.

According to the use regulations for an M1-5B district, uses below the second story are limited to wholesale, business service, warehouse and light industrial uses (Use Groups 7, 9, 11, 16, 13A, 13B, 13C and 13E). Other uses are allowed by special permit of the City Planning

Commission. Section 74-711 of the Zoning Resolution allows the City Planning Commission, by special permit, to modify use and bulk regulations (except floor area) in order to further the preservation of designated landmark buildings or buildings located within historic districts.

The application requests a modification of the M1-5B use regulations to allow approximately 6,972 square feet of retail (Use Group 6) use on the ground floor, 5,934 square feet of retail (Use Group 6) use in the cellar level, and 7,105 square feet of retail (Use Group 6) in the sub-cellar level of 583-587 Broadway Street. A total of 20,011 square feet of retail use is proposed. The application includes a report from the LPC stating that a continuing maintenance program has been established that will result in the preservation of 583-587 Broadway, and that the proposed use modification contributes to a preservation purpose.

According to the use regulations of Section 42-14D(1)(b), for buildings located on Broadway, JLWQAs are limited to those buildings with a lot coverage not exceeding 3,600 square feet. Buildings with a lot coverage in excess of 3,600 square feet may be converted to JLWQAs by authorization of the City Planning Commission pursuant to Section 42-142 of the Zoning Resolution. The New Museum is requesting an authorization pursuant to Section 42-142 to modify the subject use regulations in order to convert its second floor space to two units of JLWQAs.

In conjunction with the request for the special permit, the New Museum has submitted an application (N 040028 ZCM) for a certification by the Chair of the City Planning Commission to

the Department of Buildings, pursuant to Section 42-141(d), that the roof of 583-587 Broadway cannot meet the rooftop recreation space requirements of Section 42-14D(1)(e). According to the provisions of the Section, the additional two proposed units of JLWQAs necessitate the provision of an additional 200 square feet of rooftop recreation space. The total required rooftop recreation area for the 23 units is 3,732 square feet. The building provides 2,000 square feet of rooftop recreation area on two levels of the roof.

Lastly, the New Museum is seeking a modification to the plan for the third floor approved by the City Planning Commission as part of the 1997 special permit. While the approved plan included approximately 3,180 square feet of recreation space, the third floor space was subsequently developed as accessory storage space for the JLWQAs. The New Museum seeks to modify the previously approved special permit to reflect this change of use on the third floor.

The surrounding SoHo neighborhood is generally developed with four to six-story loft buildings primarily containing JLWQAs on the upper floors and retail, gallery and restaurant uses on the ground floor.

ENVIRONMENTAL REVIEW

This application (C 030324 ZSM) was reviewed pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Section 617.00 et seq. and the City Environmental Quality

Review (CEQR) Rules of Procedure of 1991 and Executive Order No. 91 of 1977. The designated CEQR number is 02DCP055M. The lead is the City Planning Commission.

After a study of the potential environmental impacts of the proposed action, a Negative Declaration was issued on July 21, 2003.

UNIFORM LAND USE REVIEW

This application (C 030324 ZSM) was certified as complete by the Department of City Planning on July 21, 2003, and was duly referred to Community Board 2 and the Borough President, in accordance with Article 3 of the Uniform Land Use Review Procedure (ULURP) rules.

Community Board Public Hearing

Community Board 2 held a public hearing on this application on September 11, 2003 and on September 18, 2003, by a vote of 33 to 0 with 0 abstentions, adopted a resolution recommending approval of the application with the following condition:

that the existing lease provision for a 15-year ban on eating and drinking establishments on the ground floor be maintained and the rules for joint live work quarters are complied with.

Borough President Recommendation

This application was considered by the Borough President, who issued a recommendation on June 3, 2002, approving the application with the following condition:

...since the new smoking regulations have gone into effect and with the increase in street gathering and street noise caused by people smoking outside eating and drinking establishments, this office supports the condition that there be a ban on

eating and drinking establishments on the ground floor, included in the approval of the application. This office also supports the conversion to Joint Living-Work Quarters for Artists as long as those rules are complied with.

City Planning Commission Public Hearing

On October 22, 2003 (Calendar No. 3), the City Planning Commission scheduled November 5, 2003 for a public hearing on this application (C 030324 ZSM). The hearing was duly held on November 5, 2003 (Calendar No. 5). There were three speakers in favor of the application and none in opposition.

The director of the New Museum of Contemporary Art described the subject proposal. The attorney for the project further discussed the project. The attorney also described the subject proposal in relation to the two previous actions approved by the City Planning Commission. A community resident spoke in favor of the application and reiterated that Community Board 2 recommended approval of the applications.

There were no other speakers and the hearing was closed.

CONSIDERATION

The Commission believes that the grant of this special permit is appropriate.

When the building was constructed in 1897, and continuing throughout the better part of the last century, the area known as SoHo contained a mix of commercial, warehouse and industrial uses.

However, over the last fifteen to twenty years many buildings in this area have been converted

from manufacturing uses to JLWQAs (Use Group 17D) and Use Group 6 uses that occupy much of the ground floor frontages. The Commission recognizes that, as a mixed-use neighborhood, SoHo supports a broad range of arts-oriented and creative entrepreneurial businesses, and provides opportunities for joint living-work quarters for artists. Therefore, the Commission believes that Use Group 6 uses on the ground floor, cellar and sub-cellar levels and the JLWQAs on the second floor are consistent with established land use trends in the greater SoHo neighborhood.

The proposed use modifications will facilitate the renovation and preservation of 583-587 Broadway. The conversion and maintenance of this building, to be accomplished as a result of this special permit and the prior approvals, will enhance the architectural and historical built fabric of the SoHo Cast-Iron Historic District.

The Commission notes the condition raised by Community Board 2 and the Borough President requiring the maintenance of an existing lease provision for a 15-year ban on eating and drinking establishments on the ground floor; however, the Commission's action with regard to the special permit is based on the appropriateness of any Use Group 6 use at the site. The Commission also notes the condition raised by Community Board 2 and the Borough President requiring compliance with the provisions for JLWQAs. In response to this condition, the Commission notes that the units being converted pursuant to this special permit can be used only as JLWQAs, which requires that an occupant of each unit must be an artist certified by the New York City Department of Cultural Affairs. The Commission notes that its approval of the special permit is

subject to a set of terms and conditions, including providing notification to the Attorney General of the State of New York of the requirements of the special permit in the event the property that is the subject of this application is developed as, sold as, or converted to condominium units or cooperative ownership. The Attorney General may direct that these requirements be incorporated in full in any offering documents relating to the property.

FINDINGS

The City Planning Commission hereby makes the following findings pursuant to Section 74-711 (Landmark preservation in all districts) of the Zoning Resolution:

- (1) not applicable
- (2) such use modifications shall have minimal adverse effects on the conforming uses within the building and in the surrounding area.

RESOLUTION

RESOLVED, by the City Planning Commission, pursuant to Sections 197-c and 200 of the New York City Charter, that based on the environmental determination, and the consideration and findings described in this report, the application of the New Museum of Contemporary Art for the grant of a special permit pursuant to Section 74-711 of the Zoning Resolution to modify the use regulations of Section 42-14D(2)(b) to allow retail use (Use Group 6 uses) on the ground floor, cellar and subcellar of an existing 12-story building on property located at 583-587 Broadway a.k.a. 154-158 Mercer Street (Block 512, Lots 1001 and 1002) in an M1-5B District,

within the SoHo-Cast Iron Historic District, Borough of Manhattan, Community District 2 is approved, subject to the following terms and conditions:

1. The property that is the subject of this application (C 030324 ZSM) shall be developed in size and arrangement substantially in accordance with the dimensions, specifications and zoning computations indicated on the following plans, prepared by Platt Byard Dovell White Architects LLP, filed with this application and incorporated in this resolution:

<u>Drawing No.</u>	<u>Title</u>	<u>Last Date Revised</u>
SK-22	Subcellar Plan	1/22/03
SK-23	Cellar Plan	1/22/03
SK-24	Ground Floor Plan	1/22/03
SK-26	Second Floor Plan	1/22/03
SK-246	Rooftop Lower Level	6/16/03
SK-247	Rooftop Upper Level	6/16/03
Attachment 4, #6	3 rd Floor Plan	6/16/03

2. Such development shall conform to all applicable provisions of the Zoning Resolution, except for the modifications specifically granted in this resolution and shown on the plans listed above which have been filed with this application. All zoning computations are subject to verification and approval by the New York City Department of Buildings.

3. Such development shall conform to all applicable laws and regulations relating to its construction, operation and maintenance.
4. In the event the property that is the subject of the application is developed as, sold as, or converted to condominium units, a homeowners' association, or cooperative ownership, a copy of this resolution and the restrictive declaration dated February 14, 1996 (the "Declaration"), described below, and any subsequent modifications to either document shall be provided to the Attorney General of the State of New York at the time of application for any such condominium, homeowners' or cooperative offering plan and, if the Attorney General so directs, shall be incorporated in full in any offering documents relating to the property.
5. All leases, subleases, or other agreements for use or occupancy of space at the subject property shall give actual notice of this special permit to the lessee, sublessee or occupant.
6. Upon the failure of any party having any right, title or interest in the property that is the subject of this application, or the failure of any heir, successor, assign, or legal representative of such party, to observe any of the covenants, restrictions, agreements, terms or conditions of this resolution and the Declaration, whose provisions shall constitute conditions of the special permit hereby granted, the City Planning Commission may, without the consent of any other party, revoke any portion of or all of said special

permit. Such power of revocation shall be in addition to and not limited to any other powers of the City Planning Commission, or of any other agency of government, or any private person or entity. Any such failure as stated above, or any alteration in the development that is the subject of this application that departs from any of the conditions listed above, is grounds for the City Planning Commission or the City Council, as applicable, to disapprove any application for modification, cancellation or amendment of the special permit hereby granted or of the Declaration.

7. Neither the City of New York nor its employees or agents shall have any liability for money damages by reason of the city's or such employee's or agent's failure to act in accordance with the provisions of this special permit.

The above resolution (C 030324 ZSM), duly adopted by the City Planning Commission on December 3, 2003 (Calendar No. 9), is filed with the Office of the Speaker, City Council, and the Borough President together with a copy of the plans of the development, in accordance with the requirements of Section 197-d of the New York City Charter.

AMANDA M. BURDEN, AICP, Chair
KENNETH J. KNUCKLES, ESQ., Vice Chairman

ANGELA M. BATTAGLIA, ANGELA R. CAVALUZZI, R.A., RICHARD W. EADDY, ALEXANDER GARVIN, JANE D. GOL, CHRISTOPHER KUI, JOHN MEROLO, KAREN A. PHILLIPS, DOLLY WILLIAMS, Commissioners

IRWIN G. CANTOR, P.E., Commissioner, Abstained